90-401

No.

Supreme Court, U.S.
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In the

SUPREME COURT OF THE UNITED STATES

October Term, 1990

BETSEY WARREN LEBBOS,

Petitioner

vs.

SUPREME JUDICIAL COURT OF THE COMMONWEALTH OF MASSACHUSETTS,

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME JUDICIAL COURT OF THE COMMONWEALTH OF MASSACHUSETTS

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August 13,1990

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QUESTIONS PRESENTED

1. May a state, consistent with fundamental due process of law, suspend the right to practice law of an attorney by asserting that Full Faith and Credit or Comity may be applied to recognize a retaliatory, interim, ex parte act of a private volunteer of a California State Bar Association in a sister state, claiming to change automatic membership from active to inactive status in the trade group, when the attorney refused to swear oath to the California State Bar Association's claim that it has a private State Bar Court to license lawyers, and when she is not suspended in her home state ?

2. May Full Faith and Credit or Comity be applied to advisory, interlocutory, non-judicial recommendations

of a private volunteer of a California State Bar Association in a sister state ?

3. May the Full Faith and Credit clause or Comity specifying recognition of the " public acts, records, or judicial proceedings " of a sister state apply to the private acts of a private membership and privately-funded California State Bar Association ?

4. Is the application of the Full Faith and Credit Clause or Comity a matter of a court's discretion, or do the constitutional principles of non-recognition and non-Comity to sister state proceedings without notice or hearing or court action as stated by this Court in Griffin v. Griffin, 327 U.S. 220 (1946) a matter of controlling United States Constitutional

law ?

5. May a state suspend an attorney's license to practice law by refusing to decide the constitutional challenges that bar recognition of the out-of-state system ?

6. Is a state system where the state bar association claims it has created a private membership trade group court composed of private opponents and competitors, any one of whom may take the right to work of any lawyer without notice, grounds, proof, or hearing, and no admitting court action or the right to hear the claim that the private membership trade group court is unconstitutional and void, such a fatally defective system lacking in any due process of law, that neither Full Faith nor Comity may be applied by another state to recognize

it ?

7. May a state system be recognized in another state when it provides that a volunteer of an interested party may recommend disbarment when the attorney raises any constitutional issues, and then another volunteer may just ex parte enroll the attorney as an inactive member of the bar association ?

8. Based on this court's decision in Keller v. State Bar, 495 U.S.___, 110 L. Ed. 2d. 1, 110 S. Ct._____ overruling 767 P. 2d. 1020, 255 Cal. Rptr. 542, (June 4, 1990), did the Supreme Judicial Court of the Commonwealth of Massachusetts err in suspending their Court Officer by claiming to recognize the act of a California private non-lawyer volunteer of the California State Bar Association, without notice or hearing, purporting to change

the attorney's automatic state bar membership from active to inactive, while the attorney is not suspended in California nor has she been found guilty of any professional misconduct, and when the voidness of the alleged state bar court in which the volunteer claims to sit is never permitted to be decided ?

9. Does Full Faith and Credit or Comity apply to California statutes that claim the California State Bar Association's Board may create a State Bar Court and take their opponents'and competitors' right to work by enrolling them as inactive members of the state bar association ?

10. If state statutes are unconstitutional, does Full Faith or Comity apply ?

11. May a state adopt the reasoning of

Conway v. State Bar, 47 Cal.3d 1107 (February 21,1989), which was based on its now overruled reasoning in Keller v. State Bar, supra, and give it Full Faith and Credit or Comity in order to suspend an attorney's right to work in their state, and when no attorney in the United States is subject to such a private volunteer opponent system ?

12. Did the lower court err in that Conway v. State Bar, supra, did not address the United States Constitutional issues presented ?

LIST OF PARTIES

The parties in the Petition for a Writ of Certiorari are as follows :

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Senior Justice
Supreme Judicial Court of The
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DANIEL J. KLUCOCK, ESQ.
Bar Counsel
Board of Bar Overseers
Boston, Mass. 02110

TABLE OF AUTHORITIES

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Respondent

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME JUDICIAL COURT OF THE COMMONWEALTH OF MASSACHUSETTS

Your Petitioner Attorney Betsey Warren Lebbos respectfully prays that this Court issue its Writ of Certiorari to resolve a conflict between this Court's holding in Keller v. State Bar of California 495 U.S. ____ , 110 L. Ed. 2d. 1, 110 S. Ct. ____ June 4,

1990, overruling 255 Cal. Rptr. 542 (1989), and prior decisions of this Court, (1) Gershenfield v. Justices of the Supreme Court of Pennsylvania (E.D.Pa. 1986) 641 F. Supp. 1419, and the decision of the Supreme Judicial Court of Massachusetts suspending the right of the Petitioner Attorney to practice law in that state solely on a claim of recognizing an ex parte act of a non-lawyer volunteer of a California State Bar Association, which act 18 months ago purports to change the attorney's automatic

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(1) Ex Parte Robinson 19 Wall. 513 (1873); Ex Parte Garland 71 U.S. (4 Wall) 333; Bradley v. Fisher, 13 Wall. 335, 20 L.Ed. 646 (1870); Cummings v. Misssouri (1867) 71 U.S. (4 Wall.) 277: Konigsberg v. State Bar of California (1957) 353 US 252; Schware v. Board of Bar Examiners (1957) 353 US 232,1 L Ed. 2d. 796,77 S.Ct.752 ; Gibson v.Berryhill 411 U.S.564 (1973); Goldberg v. Kelly, (1970) 397 U.S.254.

membership status in the California State Bar Association membership from active to inactive, while the attorney has never been found culpable of any professional misconduct and is not suspended from the practice of law in California. (2)

(2) The California act was done Ex Parte by the non-lawyer volunteer after the Petitioner Attorney in disciplinary proceedings in California before an alleged State Bar Court refused to raise her hand and take an oath to the claimed State Bar Court or defend before it on the basis that it is unconstitutional and void, and was the agent of her party opponent in on-going civil litigation. A volunteer of the claimed State Bar Court recommended she be disbarred. Then a second volunteer ex parte merely copied the first volunteer's claims, said that was harm to his " Public," and enrolled her as an inactive member of the California State Bar Association Ex Parte. Appendix C:30. The California Supeme Court has declined review for 18 months and no hearing is scheduled. The California State Bar Association is now the Petitioner's judgment debtor on the case then pending against it. Lebbos v.State Bar, Sixth Appellate District Court, no. H003074.

Over 100 California attorneys have lost their careers through such solo action of a private lawyer or non-lawyer volunteer of the California Bar Association with no right to raise any constitutional, statutory, legal, evidenciary issues prior to deprivation of their businesses, careers, and clients' cases and contracts by such a volunteer. Like the Petitioner, they are not suspended nor found culpable of any misconduct. They are claimed to be denied their right to work by a bar volunteer for years. The California Supreme Court, since their Conway decision, supra, has denied hearing all Petitions without opinion. (3)

(3) The State Bar of California's " Lawyer Discipline in California," Progess Report for 1988 and 1989, reports at p. 30, 19 attorneys in 1987, 31 in 1988, 28, in 1989, were involuntarily enrolled as inactive (continued next page)

An attorney is re-enrolled as an active member of the state bar by another volunteer if the attorney takes an oath before the void State Bar Court and convinces the volun-

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(3) (continued from preceding page)

members for " harm to the Public." Figures for 1990 now available show through July 12,1990, 28 more attorneys were involuntarily enrolled as inactive. Thus, it is projected the state bar is now doubling the number of attorneys, whose law practices they are taking through a volunteer, and unless this court intervenes, over 50 California attorneys will lose their careers this year alone at the hands of any one of these private trade group volunteers.

In the case of Attorney Jeryco Peterson, the attorney who claims to be the " Presiding Judge" of the alleged " State Bar Court" had him made inactive with no charges filed the week before Attorney Peterson was to try the case he has had pending against this claimed " Presiding Judge", who is just a lawyer, for five years for legal malpractice. May 27,1990 State Bar data; cross-reference to Parker et al. vs. Seibel, Contra Costa Superior Court, case no. 275894, Defendant L. Perlman.

teer the attorney's conduct no longer poses a threat of harm to the interests of the volunteer's " Public." Ca. Business and Professions Code Section 6007 (c), state bar rule 799. No Supreme Court action is required. Licensing is by the bar volunteer and not the licensing court. (4)

Your Petitioner Attorney refuses to take such an oath or submit herself to an alleged State Bar Court, as such a private membership, privately funded trade group court modeled on those of Communist China is unconstitutional, as herein described. Her

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(4) Ca. Business and Professions Code section 6126 (b), as amended, makes it a crime to practice law if involuntarily enrolled as an inactive member of the California state bar. Section 6125 requires that all attorneys who pracice law must be active members of the state bar.

oath is to support the United States and State Constitutions.

Such a private membership, privately-funded trade group Court represents the destruction of all 29.1 million California citizens' rights to vote to create their own courts and elect and remove their own judges to their own courts, and their rights to " One Person, One Vote," and is the unlawful delegation of the Public power of the People to 23 private persons, as herein described.

This is the first time in our United States history a state has turned over Court Officer licensing to any one private lawyer or non-lawyer volunteer of a private membership state bar association composed of opponents and competitors of each other and allowed them to take each

other's right to work throughout the entire United States and for years. Appendix A and Appendix B.

Said Writ is requested to consider the limits of and the application of the Full Faith and Credit Clause of the United States Constitution and the limitations of the doctrine of Comity as applied to attorney licensing throughout the United States.

Petitioner requests this Court either decide the United States and State Constitutional issues the state court declined to decide, or reverse and remand the judgment of the Supreme Judicial Court of the Commonwealth of Massachusetts of June 13, 1990 in In re: Matter of Betsey Warren Lebbos, ------Mass.------, ----N.E.----June 13, 1990, for it to address, with this

Court's guidance, the serious United States and state Constitutional issues tendered.

I.

OPINIONS BELOW

The opinion of the Supreme Judicial Court In the Matter of Betsey Warren Lebbos, issued June 13, 1990, and appearing at ____Mass.___, ____ ____ N.E._____, , is attached hereto at Appendix A.

II.

JURISDICTION

The jurisdiction of this court is invoked under 27 U.S.C. s. 1257 and United States Supreme Court Rule 19 (a) where a state court has decided United States and out-of-state Constitutional issues contrary to the interpretation of this Court in Keller v. State Bar of California, Supra, and in

reliance on a California decision in Conway v. State Bar of California, 47 Cal. Rptr. 3d. 1107 (1989), which was issued two days before the California Supreme Court's now reversed Keller, supra, decision and in reliance on the same now reversed principles of law, which sought to assert the California State Bar Association is a governmental agency and not a private membership trade group, akin to a labor union.

III.

CONSTITUTIONAL AND SHERMAN ANTI-TRUST ACT PROVISIONS INVOLVED

UNITED STATES CONSTITUTION

Amendment 1. Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Amendment V. No person shall be de-

prived of life, liberty, or property, without due process of law.

Amendment XIV. No state shall make or enforce any law which shall abridge the Privileges and Immunities of citizens of the United States nor shall any state deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the law.

Article I, s. 10, clause 1. No State shall pass any Bill of Attainder, ex post facto Law, or Law impairing the obligation of Contracts.

Article IV, s. 1. Full Faith and Credit shall be given in each state to the public Acts, Records, and judicial proceedings of every other state. And the Congress may by general laws prescribe the manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

Article IV, s. 2. 1. The Citizens of each state shall be entitled to all Privileges and Immunities of Citizens in the several states.

Article IV, s. 2: This Constitution, and the laws of the United States which shall be made in pursuance thereof..shall be the supreme Law of the Land; and the judges in every state shall be bound there by, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

THE SHERMAN ANTI-TRUST ACT

15 U.S.C. section 1

Every contract, combination, in the form of Trust, or otherwise, or conspiracy in restraint of Trade or Commerce among the several states, is declared to be illegal.

COMMONWEALTH OF MASSACHUSETTS

SUPREME JUDICIAL COURT RULE 4:01
BAR DISCIPLINE

Section 16. Reciprocal Discipline

(1) Upon receipt of a certified copy of an order that an attorney is suspended or disbarred from the practice of law in another jurisdiction (including any Federal Court and any State or Federal administrative body or tribunal) this court shall issue a notice directed to the respondent-attorney containing a) a copy of the order of the other jurisdiction; and b) an order directing that the respondent-attorney inform the court within thirty days from service of the notice of any claim by him that the imposition of identical discipline in this Commonwealth would be unwarranted and the reasons therefor. The Bar Counsel shall cause this notice to be served in hand upon the respondent-attorney....

(3) Upon the expiration of thirty days from service of the notice under subsection (1) above, the court, after

hearing, may enter such order as the facts brought to the attention may justify and in any event, may impose the identical discipline unless the Bar Counsel or the respondent-attorney establishes, or the court concludes that (a) the procedure in the other jurisdiction did not provide reasonable notice or opportunity to be heard; b) there was significant infirmity of proof establishing the misconduct; c) imposition of the same discipline would result in grave injustice; or d) the misconduct does not justify the same discipline in this Commonwealth.

(4) upon receipt of a certified copy of an order that an attorney admitted to practice in this Commonwealth has been subjected to public discipline other than suspension or disbarment in another jurisdiction ... the Board of Bar Overseers and the Clerk of this Court for Suffolk County shall file it and make it available to the public to the extent that the record of any other public disciplinary proceeding would be made available.

(5) A final adjudication in another jurisdiction that an attorney has been found guilty of misconduct may be treated as establishing that misconduct for purposes of a disciplinary proceeding in the Commonwealth.

The California Constitutional provisions, statutes, and state bar's

rules are set forth in this Petition.

IV.

STATEMENT OF THE CASE

Petitioner attorney is a duly licensed attorney for 19 years. She was admitted to practice law by the Supreme Judicial Court of the Commonwealth of Massachusetts in 1971, and by the California Supreme Court in 1975. She has no client complaints, no disciplinary record, and no malpractice.

She brings this Petition in which she assserts that a judgment of suspension in the Commowealth of Massachusetts " pending completion of disciplinary proceedings " in the State of California violates the Full Faith and Credit Clause of the United States Constitution and principles of Comity and deny her fundamental

due process of law and her right to earn a living and practice law.

She contends that Article IV, Section 1 of the United States Constitution concerning a state recognizing the " Public Acts, Records, and Judicial proceedings " of a sister state does not authorize a state, in its discretion, to extend recognition to the private, uncertified Ex Parte act of a private non-lawyer volunteer of a California Bar Association claiming to enroll the attorney as an inactive member of the California State Bar Association.

She further claims that a state court's rule which provides under " Reciprocal Discipline " that a court may impose identical discipline to that rendered in a sister state upon receipt of a certified copy

of an order of suspension may not be constitutionally changed to include alleged orders, other than suspensions, issued not by the admitting and licensing court in the sister state, but by a non-lawyer volunteer of a California State Bar Association claiming to change the automatic membership of a California attorney from active to inactive in the California State Bar Association.

She further contends that Full Faith and Credit or Comity may not be applied to interlocutory, advisory claims when there is no final, binding, and conclusive adjudication by any court of law of the veracity or validity of any claims of any professional misconduct.

She further claims that the

California system which permits a non-lawyer or a lawyer volunteer of a California State Bar Association, with no procedural or substantive due process protections, to claim to take the right to work of any California attorney in fifteen days, is so fatally defective in notice, hearing, competency, grounds, denial of rights to cross-examination, cross-examination, right to raise and have decided constitutional claims, and right to action and decision on such claims and the law by the admitting and licensing court, that the California system may not be recognized in another state and is void for denial to California attorneys of fundamental procedural and substantive due process of law.

She further contends that the

decision in Gershenfield v. Justices, supra, which indicated that not even the admitting and licensing court could " suspend " an attorney without post-deprivation adjudication of the merits within six months, applies to void the California's volunteer's ex parte involuntary inactive enrollment entered 18 months ago, and when there has not been and may never be any final adjudication in the State of California.

She also asks this court to adopt the standard approved in In re: Malvin (D.C. App. 1983) 466 A. 2d. 1220, that only imminent, substantial and immediate great harm authorizes any temporary suspension and solely by the licensing court, that it is reserved for exceptional cases, is an extreme measure, and is not available in a

routine disciplinary case and never used to prevent adjudications of unconstitutionality of bar procedures or in retaliation for exercise of constitutional rights. She asks that the California involuntary inactive enrollment statute be declared void for failure to comply with this requisite exigent and competency of court standard of In re Malvin, Supra.

A. Facts

On June 13, 1990, the Supreme Judicial Court of the Commonwealth of Massachusetts in their written decision at ___ Mass.___, ____N.E. ____ , Appendix A, suspended Petitioner's right to practice law in the Commonwealth of Massachusetts pending completion of disciplinary proceedings in the State of California.

The order of suspension was based

solely on a claim to Full Faith and Credit under the United States Constitution and the Supreme Judicial Court's rule entitled, " Recriprocal Discipline " which only applies to final adjudications in a sister state. Appendix A, p. 5.

The decision gives Full Faith and Credit to an " order of a California state bar association." Appendix C. The order is not of suspension, but of alleged involuntary inactive enrollment as a member of the California State Bar Association and was issued by one of its non-lawyer volunteers one and one half years ago on February 14, 1989. Appendix C-32. It was issued by it in the middle of the California proceedings.

In 1986, on a pending civil suit, the California State Bar Association

had an Ex Parte Judgment entered of $ 32,676 against the Petitioner. The Petitioner, upon discovery of the $ 32,676 judgment, promptly moved to set aside the judgment for State Bar fraud. This was finally done on May 11, 1989 by the State Court of Appeals. Lebbos v.State Bar of California, Sixth Appellate District Court, docket no H003074. A second suit was filed in 1988 concerning the California State Bar's refusal to act on known embezzlements by an attorney who was a court-appointed trustee. The Trustee was criminally convicted of embezzlement and sentenced to four years in state prison May 1, 1990.

Thus, at all times material hereto, the California State Bar Association was the opposing counsel and party in

on-going civil litigation filed and prosecuted against them by the Petitioner Attorney.

Thus, the California State Bar Association brought charges against their opposing counsel and party in 1988 to prevent her prevailing against them. They brought the charges of her other opposing counsel and party in Lebbos v. Judges, 883 F.2d. 810 (Ninth) (1989) in exchange for obtaining votes from them for their dues. They filed them before an entity they claim to have created called " The State Bar Court." Appendix B.

The Petitioner appeared specially and refused to take an oath to testify or defend before the alleged State Bar Court on the basis it was unconstitutional and void and was and is the

agent of her opposing party and counsel.

She then filed with the California Supreme Court to void the alleged State Bar Court. The volunteer of the alleged State Bar Court, who was 83 and senile, then recommended she be disbarred. Then another volunteer, a non-lawyer, on February 14,1989, claimed to Ex Parte enroll the Petitioner as an inactive member of the California State Bar Association.

A Petition to the California Supreme Court was denied as premature. All resulting petitions have been denied without opinion for one and one half years. February 14, 1990, one year to the day of the ex parte inactivity, they issued their own Writ. Since then, they have posted no brief-

ing schedules and have scheduled no hearing. It is unlikely any hearing will be held before 1992, as three of the seven Justices have resigned in the last 14 months for non-health related reasons, and there is an overwhelming backlog of death penalty cases.

The statutory complex delegating to the California State Bar Association the licensing of California lawyers provides any non-lawyer or lawyer volunteer, with or without notice or hearing, charges, grounds, and with no right to any review of any constitutional, evidenciary, or legal challenges, and no admitting court action, may immediately take the right to work of any California attorney for any reason and have the attorney arrested and imprisoned the next day.

Section 6007, Section 6125, Section 6126 (b), State Bar rules, 789-799.

On September 8, 1989 the California State Bar Association lodged with the Supreme Judicial Court of the Commonwealth of Massachusetts their claimed " order" of Involuntary Inactive Enrollment. Appendix 1.

The Supreme Judicial Court then issued their Order on the Petitioner, stating, " On the foregoing Order of the State Bar of California filed September 8,1989, it is ordered that the * give notice to the said respondent, Betsey Warren Lebbos, under S.J.C. Rule 4:01, s. 16 (1), directing her to inform the Court within thirty days of the service of this order of Notice why the imposition of the identical discipline imposed in

the State Bar of California, if imposed in the Commonwealth of Massachusetts would be unwarranted." Appendix E.

Petitioner filed a Motion to Dismiss on the basis that a) a state may not recognize the act of a private volunteer of a private bar association, b) bar associations can not issue " orders," c) there was no identical discipline to impose as the attorney had not been disciplined or suspended, d) the United States Constitution does not permit licensing of Court officers by a private membership trade group non-lawyer volunteer e) a volunteer unilaterally changing membership in their trade group from active to inactive is not a "suspension," f) the private act was not subject to any recognition because

it was interlocutory, g) Opponents and competitors can not license each other, h) The California State Bar was disqualified as her judgment debtor, i) the California State Bar's claim to having a private State Bar Court is unconstitutional, j) California's involuntary inactive enrollment statute is unconstitutional, and k) the California Supreme Court's decision in Conway v. State Bar, supra did not address the unconstitutionality of the claimed State Bar Court, the Sherman Anti-Trust Act, and the United States' Constitutional issues, which now needed to be addressed.

The Petitioner submitted briefs on the Sherman Anti-Trust Act and the unconstitutionality, both under the California State Constitution and

the United States Constitution, of the statute delegating to the 23 private member board of the California State Bar association, the power to create a privately-funded and run private " State Bar Court " to replace the admitting State Supreme Court and the separate statute and rules claiming the State Bar licenses California attorneys by unilaterally and ex parte involuntarily enrolling them as an inactive member of the California State Bar Association.

On December 13,1989, the Honorable Justice Nolan of the Supreme Judicial Court of the Commonwealth of Massachusetts for the County of Suffolk entered a Judgment. Appendix C. Based on a claim to reciprocal discipline under Supreme Judicial Court Rule 4:01, Section 16 (1), the Court

recognized the alleged State Bar Court and asserted that involuntary transfer to inactive status on a finding that the attorney's conduct poses a substantial threat of harm to the public or her clients by a volunteer of the California State Bar Association is a " suspension," ordered that the Petitioner be suspended from the practice of law pending final disposition of disciplinary proceedings pending in the Supreme Court of the State of California. Appendix C.

In fact, nowhere in the record is there any mention of any harm to any client. The compensated referee of the alleged state bar court's Ex Parte order solely refers to harm to his " Public" (emphasis added) as his grounds for ex parte

inactive State Bar membership. Appendix C: 30.

On June 13, 1989 the Supreme Judicial Court of the Commonwealth of Massachusetts affirmed this Judgment. Said Judgment indicates the state court has interpreted the Full faith and Credit clause to extend to private acts of a private non-lawyer volunteer of a trade group, that its rule requiring certified copies of orders of suspension may be deleted or changed, that denial of the right to work is a discretionary act, that interlocutory claims of a volunteer of a trade group are " final adjudications of misconduct " for purposes of their reciprocal discipline rule, that a suspension may issue without addressing the constitutional issues or the facts and the exceptions

accorded by the rule. Appendix A.

V.

REASONS FOR GRANTING THE WRIT

A.

THE FULL FAITH AND CREDIT CLAUSE AND COMITY DO NOT APPLY TO PRIVATE ACTS

The United States Constitution requires recognition of the "public acts records, and judicial proceedings" of a sister state. Art. IV, s. 1, US Consti. This court stated in Keller v. State Bar, supra, the California State Bar Association is a privately funded, private membership group, akin to a labor union, and not a governmental agency, for Federal question purposes.

The California Constitution states attorneys admitted to practice law are members of the Bar Association, which is a "public corporation". Art. 6, s. 9, Ca. Consti. The private

members contend the clause violates the United States Constitution, as they can not be forced to be automatic members of a unit of state government and forced to be an arm of the state in order to work. The State Bar contends their denomination as a " public corporation " makes them part of the government in power, and private attorneys may be forced to be part of the government.

As Appendix C indicates, the judgment below is based on recognition of an alleged " order of the California State Bar Association," and not any order of suspension by the Petitioner's admitting Supreme Court. Appendix A and B.

Are not the holdings that corporate records and private acts are not recognizable under the Full Faith

and Credit clause, as expressed in Minnesota v. Northern Securities Co., 198 U.S. 48, controlling and this court's ruling in Keller v. State Bar, supra, controlling to void Massachusetts' recognition of a private act of a private non-lawyer volunteer of a private State Bar Association ?

B.

FULL FAITH AND CREDIT AND COMITY DO NOT APPLY TO INTERLOCUTORY NON-JUDICIAL CLAIMS

The judgment acknowledges that the California State Bar Association's alleged order of " inactive membership " was entered after a hearing by it, but before review and before the entry of any actual findings of misconduct and an order of the admitting and licensing California Supreme Court. Appendix A. As Keller v. State Bar, supra, points out, the state

bar's role is solely advisory to the California Supreme Court concerning findings and recommended discipline. California law provides that the California Supreme Court undertakes De Novo review of the evidence and makes its own findings, which are the only legally cognizable findings ever made. Hinds v. State Bar (1941) 119 P. 2d 134, sections 6077 and 6078. The California Supreme Court is the only body empowered to decide any law issues and the state bar is not permitted to decide any constitutional issues, such as the voidness of the State Bar Court. In re: Cate 270 P. 969, 273 P. 617, Article 3, sections 3 and 3.5, Ca. Constitution.

The judgment below is in conflict. It acknowledges the claimed inactivity was done by a bar associa-

tion volunteer in the middle of proceedings and that completion of proceedings is still pending in the California Supreme Court. Appendix A. It acknowledges that the bar's claims of misconduct are interlocutory only. Although it claims an appeal is pending with the California Supreme Court, but state law provides review of the State Bar is not an appeal as the State Bar enters no orders and makes no judgments, but solely issues recommendations to the California Supreme Court, it is clear that it acknowledges the alleged findings of misconduct are by someone in the Bar Association copying the alleged findings of his fellow Bar Association person and not the final findings and decision of the admitting court. Keller v. State Bar, supra.

Then it claims that the state bar's " hearing panel's referee's " claims are a " final adjudication of professional misconduct," when they are not a final adjudication of those claims in the sister state. Appendix A. The judgment states, " Section 16 permits a final adjudication of misconduct, made in a another jurisdiction, to be treated as establishing that misconduct for our purposes."

Since there is obviously no final adjudication of any misconduct in California, just claims of an interested Bar debtor referee, who was a non-lawyer, just copying the claims of a fellow referee, and the Full Faith and Credit clause and Comity only apply to the binding, conclusive, and final decisions of real courts of law as to the merits

adjudicated, is not the judgment void for denying the Petitioner due process of law ? Since interlocutory or administrative claims have been held to not be entitled to full faith and credit, Arizona Grocery Co. v. Atchinson, T. and S.F.R. Co., 284 U.S. 370, 76 L. Ed. 348, 52 S. Ct. 183, and Swift v. McPherson 232 US 51, 58 L. Ed. 499, 34 S. Ct. 239, does not the judgment deny the Petitioner due process of law by asserting such claims are interlocutory claims but are entitled to discretionary recognition so as to suspend the right to work of an attorney ?

Since an attorney has a protected property interest in their professional reputation, their business, their clients, and their right to work, is not due process violated by a state

depriving an attorney of their right to work through nation-wide published claims of professional misconduct based solely on the ex parte hearsay of a non-lawyer volunteer of a private membership trade group which is the attorney's judgment debtor ?

C.

FULL FAITH AND CREDIT OR COMITY DO NOT APPLY TO VOID ENTITIES

The judgment being affirmed by the Supreme Judicial Court alleged there was a State Bar Court that was being recognized. Appendix B. The full court's judgment did not refer to it, but claimed someone, not identified, placed the attorney on " inactive" status. Appendix A. It then claims that the attorney's constitutional claims need not be decided.

This Court has held that an un-

unconstitutional Court is void and is entitled to no recognition. Norton v. Shelby County, 118 U.S. 454,6 S. Ct. 1121, 30 L. Ed. 178. Although the existence of a state court is a matter of state law, but the state has, thus far, refused to decide the unconstitutionality of the alleged state bar court, is not a sister state obliged to determine that state law when a determination of deprivation of right to work turns on that interpretation ? Further, when the issue is whether a court is void for denial of " One Person, One Vote," or for unlawful delegation of the public power to create a court to private persons, United States Constitutional issues, is not the sister state obliged to address those issues prior to deprivation of right to

work on a claim of recognition of the alleged state bar court ?

Your Petitioner presented to the Supreme Judicial Court of the Commonwealth of Massachusetts the voidness of the alleged State Bar Court of the California State Bar Association under both the State and United States Constitutions and the Sherman Anti-Trust Act, yet they suspended her by indicating they need not address these constitutional issues. Appendix A.

Since the attorneys' defense is that she can not lose her right to work throughout the United States with her valid licenses to practice law at the hands of a void non-admitting and private competitor and opponent trade group court volunteer, and it is null and void, and she can not be forced to

swear oath to a void court in order to work, the refusal of the court below to address the Constitutional claims denies her fundamental due process of law. See Middlesex County Ethics Comm. v. Garden State Assoc. 102 S. Ct. 2515, (1982) where abstention does not apply to state disciplinary procedures which afford no opportunity to raise and have determined constitutional challenges prior to a taking of the right to work. (5)

Since the California Courts have declined to rule on the unconstitutionality of the alleged State Bar Court, and, a sister state appears to be obliged to interpret state and United States Constitutional provi-

(5) Section 6086.5 in 1988 provided, " The Board (of Governors of the State Bar Association) may create committees
(continued next page)

sions which have not been interpreted by the sister state when confronted with an issue whether to take the liberty, property, or contracts of their own Court Officer, and Massachuetts also now declines to rule, it is proper and appropriate for this Court to assume jurisdiction and finally void the alleged State Bar Court of the State Bar of California, instead of your Petitioner Attorney and over a hundred other California attorneys

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(5) to be known as the State Bar Court. " In 1988 this was amended to " The Board shall create a State Bar Court." The Board is 23 private persons. 17 are lawyers. 6 are lay persons chosen by the Governor, Assembly, and Senate.16 lawyers are chosen from 9 Bar Districts. But some districts have 5000 lawyers with one vote, the same as another district with 1,000. The 17th lawyer is chosen from a group createed and financed by the State Bar, The California Young Lawyers Association. Thus, lawyers under 35 have 2 votes while older lawyers have one or none.

never being allowed to work, solely because they support the Constitutions of the United States and of the State of California, which outlaw private opponent and competitor courts modeled on Chinese Communism. (6)

D.

FULL FAITH AND CREDIT OR COMITY SHOULD NOT APPLY TO COURTS NOT OF RECORD

The judgment belows recites that the Supreme Court's rule is based on receipt of a certified copy of an or-

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(6) The State Bar Court of the State Bar of California is void under the California Constitution, in addition to its voidness under the United States Constitution. Art.6, sec. 1 of the California Constitution lists the only permitted courts and has no legislative authority to create any new ones. Art.6, sec. 9 of the California Constitution lists the California State Bar as a corporation. All California case law has always held the legislature could create no courts or give any judicial power to any entity. Refer to the dissent of (continued next page)

der of suspension. It then recites that " an order has been entered in California involuntarily transferring the attorney to an 'inactive status'." It fails to state there is no Court order. It fails to state that the inactivity is in state bar membership and not licensing by the State Sup-

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(6)
Justice Kaufman in Conway v. State Bar, supra. Also, the doctrine of separation of powers of Art.3, Sec. 3 of the California Constitution voids the state legislature trying to create a private attorney licensing court run by its creation, the State Bar. Refer to the dissent of Justice Kaufman in Conway v. State Bar supra.

In addition, the Sherman Anti-Trust Act, which is applicable to Bar Associations, appears to void this private opponent and competitor court as a combination and conspiracy in restraint of the trade and commerce of their own opponents and competitors, which is not subject to the Parker Doctrine as the anti-competitive effect is not state policy nor is it supervised by the State. Goldfarb v. Virginia State Bar, 421 U.S.776, 95 S.
(continued next page)

reme Court. It, however, acknowledges that the alleged order is not certified nor is it a suspension, which under California state law, requires an order issued by the attorney's licensing court, and not by any other entity. Keller v. State Bar, Supra.

The California Constitution list the only courts of record. Art. 6, sec. 1, Ca. Constitution. The provisions of Art. 6, sec. 9 concerning the state bar being a public corporation has no provision for it having any records. State law only permits the State Bar to have minutes,

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(6) (continued from preceding page)

Ct. 2004 (1975), at p. 2017; Patrick v. Burget, U.S. 1988, 108 S.Ct. 1658, 100 L. Ed. 2d. 83, rehearing denied, 108 S.Ct. 2921, 101 L.Ed. 2d. 952, on remand, 852 F. 2d. 1241; Tambone v. Memorial Hospital for McHenry County, an Illinois Corporation, 635 F. Supp. 508 (N.D. Ill.)

transcripts, and recommendations for the California Supreme Court. It is not entitled to have any other records and has no self-certifying authority for itself or its claimed State Bar Court. Section 6080. In addition, the State Bar has exempted itself from all State law. Section 6001.

The question then becomes whether prior holdings of this Court indicating that alleged courts that are not courts of record are not entitled to Full Faith and Credit are still controlling ? Refer Smithsonian v. St. John, 214 U.S.19.

E.

FULL FAITH AND CREDIT AND COMITY DO NOT APPLY TO ORDERS ISSUED WITHOUT NOTICE OR HEARING

Since the judgment recited that, " the attorney's various challenges to the constitutionality of the procedure

in California need not be reassessed and decided here," does not this violate the express ruling of this Court in Griffin v. Griffin, 327 U.S. 220 (1946), that neither Full Faith and Credit nor Comity apply to state proceedings that deny procedural due process of law, even when those procedures are sanctioned by state law ?

The judgment recites that although notice was sent to the attorney, she did not appear." The " order of the State Bar" they claim to recognize recites that " Notice was filed and served upon Respondent in the time, form, and manner specified by Rule 791 of the Rules of Procedure of the State Bar Court.." Appendix C-1. That Rule, however, contradicts the applicable State Law, Section 6002. State law required notice by certified

mail with a return receipt. Section 6002. The rule of the State Bar Court permits merely mail notice by certified mail with no receipt.

Both state law and the United States Constitutional due process clause prohibit service by a party or prosecutor. Sullivan v. Sullivan, (1967) 64 Cal. Rptr. 82, 256 C.A. 2d. 301, Coolidge v. New Hampshire, 403 U.S. 443, 441. Yet the claimed mail notice was sent by the prosecutor. Refer Bar Counsel Brief.

The rule of the alleged State Bar Court permits an order being entered with no service and within 15 days of a claim of mailing by a prosecutor and with no hearing. State Bar Rules 791-792. A waiver of a hearing is presumed by non-receipt and by not requesting that a hearing previously set be held

within ten days of an alleged mailing. Appendix C-1. The volunteer may then enter Ex Parte an immediate order enrolling the attorney as an inactive member of the State Bar with no notice and no hearing and on different and distinct grounds from any disciplinary proceeding or no grounds within 15 days of the prosecutor claiming he mailed a letter without receipt or proof of mailing or of receipt. This, in fact, is what occurred to the Petitioner- no notice and no hearing. Appendix p. C-1. The judgment acknowledges there was no hearing." The hearing panel referee, relying on the findings in the disbarment proceeding, ordered that the attorney involuntarily be placed on inactive status." However, there are no hearing panels. There is just one non-lawyer volun-

teer. Appendix C- 32 (L.J. Dewald, Compensated Referee). The judgment also misstated the alleged order as the alleged order states, " Order for Involuntary Enrollment " - " It is the order of the undersigned that Respondent..be enrolled as an inactive member (of the State Bar Association).

The question then is whether the Judgment which recited that constitutional issues need not be addressed violates the holding of this court in Griffin v. Griffin, supra, that a proceeding without notice or hearing is unconstitutional and void.

F.

FULL FAITH AND CREDIT OR COMITY DOES NOT APPLY TO ORDERS BASED ON THE EX PARTE HEARSAY OF ANOTHER

The judgment states, " The hearing panel referee, relying on the findings in the disbarment proceeding, or-

dered that the attorney involuntarily be placed on inactive status." As discussed infra, there are no findings until they are made by the California Supreme Court, since private persons are not empowered to determine law or constitutional issues.

This Court has held that when an order is made based on the recommendation of another by one not in attendance at the hearings and he has no transcript of what actually transpired at the prior proceeding, but relies on the hearsay of others, this is void as denying fundamental due process of law. Morgan v. United States (1936) 298 U.S.468, 56 S.Ct.906, 912, 80 L.Ed.1288, 1295; 304 U.S.1, 58 S. Ct. 773, 82 L. Ed. 1129.

Thus, the judgment's acknowledgement that the second volunteer just

copied what the first volunteer claimed as a basis of Full Faith and Credit to the latter's claims admits that the order is void. Thus, the judgment's refusal to address this constitutional defect as voiding the proceedings denied the attorney due process of law.

G.

FfULL FAITH AND CREDIT DOES NOT APPLY TO UNCONSTITUTIONAL STATE STATUTES

1. Void for vagueness and overbreadth

California's involuntary inactive enrollment statute which appears at section 6007 (c) authorizes the California State Bar association to enroll an attorney as an inactive member of their Bar Association upon a finding that the attorney's " conduct poses a substantial threat of harm to the interests of clients or the Public."

The State Bar's implementing rules permit a non-lawyer or lawyer volunteer to define his threat, his substantial, his harm, his interests and his public or clients, with or without notice or hearing. State Bar rules of procedure, rules 789-798. Thus, although this Court in Keller v. State Bar, supra, held that the ethical codes for attorneys are established by the California Supreme Court, California attorneys lose their right to work, not for violating their own code established by their admitting court, but by the legislature letting its creation, the State Bar, take any of its members' rights to work for not violating the Code, but for vague, subjective, and nebulous " threats " of " harm " to " interests " of a volunteer's subjective " Public,"

which involve no violations of any Rules of Conduct. The attorney presented to the court below the unconstitutional application of this standard to her case. However, the court held it would consider no challenges. Since an almost identical standard was held unconstitutional for vagueness and overbreadth in Housworth v. Glisson, 485 F. Supp. 29, (N.D.Ga.) should not the same standard now be voided in attorney licensing ? Norton v. Shelby County, supra.

2. Unlawful Delegation of Public power to private persons

Since rule 100 of the State Bar Court provides that its members are lawyers and non-lawyers appointed by the 23 member board of the State Bar, and the State Bar is a privately-funded, private membership group, do not

this court's rulings concerning a denial of due process occurring by reason of state statutes which delegate to private persons public power to take liberty and property apply to void California's statutory complex allowing any private volunteer to take careers ?

3. Bill of Attainder prohibitions

Similar to statutes which prevented a class of persons from occupying positions in a labor union, California's involuntary inactive statute, with the State Bar rules, allow the legislature to determine guilt, target solely California lawyers to be subject to loss of their right to work and their careers for harm to a volunteer's " public's interests," and allow this loss of right to work with no judicial action or process. United

States v. Brown, 381 U.S. 367, 20 L. Ed. 672, 88 S.Ct.1673, reh. denied 393 U.S. 900, 21 L. Ed. 2d. 188, 89 S.Ct. 63. Are not these statutes unconstitutional Bills of Attainder ?

4. Impairment of Obligations of Contract and Due Process of law

Although moribund for many years due to the concept of the police power, Article 1, section 10 of the United States Constitution does not permit states to pass laws impairing the obligation of contracts. Is not California's scheme similar to that held invalid in Trustees of Dartmouth College v. Woodward (1819) 17 U.S. 518, 4 L. Ed. 629 where the non-licensing's contract with its licensee was held to prevent a state legislature voiding that contract ? While licensing agencies may alter their own

contracts with their licensee under the police power, may a third branch of government that does not license lawyers do so without notice and abort the Court officers' contracts with their own clients and with their ad-admitting court without notice and action by the attorney's licensing court ?

The serious due process issue that was believed to be resolved by this Court's decisions in Ex Parte Garland, supra, Ex Parte Robinson, Bradley v. Fisher, supra, and Cummins v. Missouri, supra, has now resurrected itself with the first attempt in the United States to claim that a Court Officer is not licensed by her admitting court, but by the legislature deciding it desires its creation, a California State Bar

association, and private opponents and competitors in it to license each other.

H.

MAY FULL FAITH AND CREDIT BE PREMISED ON CONSTITUTIONALITY OF STATUTES BY DENIAL OF PETITIONS WITHOUT OPINION ?

The judgment below asserted that this Court's denial of Petition in Lebbos v. State Bar of Calif., 110 S. Ct. 335 (1989) entitled the Court, in its discretion, to conclude that because this Court and the California Supreme Court rejected the attorney's challenge to her " temporary suspension " pending a final appellate decision on her disbarment, that parallel temporary suspension is warranted in Massachusetts," and that constitutional challenges need not be considered.

Since there is no temporary suspension, the premise itself is false. There is no California valid entity that has issued anything. Suspension requires due process rights while Involuntary inactive California State Bar membership has none. It is axiomatic that denial of a Petition by this Court is no expression of the law or the merits. California has the same statement that denial of a Petition by its Supreme Court is no expression of opinion either. Advisory Comment, California Supreme Court rule 29.

It would appear, as a matter of first impression, that Massachusetts erred in ruling it need not decide the tendered Constitutional issues, because this Court and the California Supreme Court did not do so, as a determination of those issues was a

precondition to entering a valid order.

I.

FULL FAITH AND CREDIT MAY NOT APPLY TO CONWAY V. STATE BAR

The judgment relies on the California Supreme Court's decision in Conway v. State Bar, Supra. Appendix A. That decision, made two days before its Keller decision, now reversed by this Court, was clearly based on the same premises involved in its decision in Keller v. State Bar, supra. The California Supreme Court believes that the legislature may create the California State Bar Association into a governmental agency and transfer vested Attorney licensing from the Judicial branch of government to the Legislative branch, who may delegate it to its creation, the California State

Bar Association. An extremely serious constitutional crisis has resulted.

This Court should review the Conway, supra, decision and hold that it did not decide the constitutional issues presented herein, and to the extent it is claimed to do so, it is unconstitutional for failure to provide basic due process of law.

J.

THE JUDGMENT DENIES EQUAL PROTECTION OF STATE LAW AS IT DECLINES TO APPLY ITS OWN RULE TO THE PETITIONER

As the judgment points out, the Massachusetts Reciprocal Discipline rule required that there be a certified copy of an order of suspension. Appendix A. Yet, a suspension was entered with no such certified copy of an order of suspension. The Massachusetts rule also states that identical

discipline may be imposed. Yet there is no discipline to reciprocate. As applied to these facts, an identical order would be to enroll the attorney as an inactive member of the Massachusetts Bar Association. The Massachusetts rule also stated that the attorney could show that no discipline should be imposed when there was not a reasonable notice and opportunity to be heard, when there was a significant infirmity of proof, when grave injustice would occur, and when the misconduct would not warrant the same discipline in Massachusetts. Appendix A.

Although the judgment claims notice, but fails to address that mail notice from a prosecutor without receipt is not proper notice, it does acknowledge no hearing was held and

the referee merely copied what his fellow referee claimed and made the order based solely on that. Further, the attorney did tender how no proof had ever been presented in support of any charges and that they were unconstitutional, Reply Brief, p. 5-20, and how no discipline could be imposed in Massachusetts for freedom or speech, yet the judgment states, " We shall not recite the findings on the various charges of disciplinary misconduct, nor shall we become involved in the attorney's challenges to those findings. " (emphasis added)

Does not the refusal of the court to apply its own rule to the Petitioner deny her the equal protection of state law ?

K.

IS NOT THE JUDGMENT VOID FOR FAILURE TO PROVIDE A PROMPT POST-DEPRIVATION FINAL ADJUDICATION ?

In Gershenfeld v. Justices of the Supreme Court of Pennsylvania, supra, the Court held that even the admitting and licensing court could not enter an emergency suspension order without a prompt post-deprivation hearing due to the substantial investment of the attorney in his career. The Court stated due process is violated with a delay of more than six months. In the instant case, the denial has been for 18 months. Appendix C-33. Petitioner requests that the " inactivity" be voided due to failure to afford a prompt, post-deprivation final ruling.

CONCLUSION

This Petition requests this Court void and vacate the Massachusetts Jud-

gment of suspension on the basis that the Full Faith and Credit Clause and Comity do not permit a claim that a private non-lawyer volunteer of a California Bar Association suspends lawyers nor does it apply to interlocutory claims of such a volunteer, and to establish that Due Process of law for attorneys requires recognition of only the admitting court's final judgments and that any interim suspension by it must comply with the requirement of both In re Malvin, supra, and Gerhenfield v. Justices, supra. Over 100 California attorneys have lost their careers through these California defective procedures, and they deserve protection by this Court with minimum due process of law.

RESPECTFULLY SUBMITTED,

BETSEY WARREN LEBBOS

BETSEY WARREN LEBBOS
PETITIONER/ ATTORNEY

No._____

IN THE SUPREME COURT OF THE

UNITED STATES

October Term, 1989

BETSEY WARREN LEBBOS,
Petitioner

v.

JPREME JUDICIAL COURT OF THE
)MMONWEALTH OF MASSACHUSETTS
Respondent

PETITIONERS' APPENDIX

BETSEY WARREN LEBBOS
Petitioner/ Attorney
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Petitioner Attorney
Pro Se

BEST AVAILABLE COPY

APPENDIX B

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK : SS SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
NO. 89-42 BD

IN RE; BETSEY WARREN LEBBOS

This matter came before the court, Nolan, J. Presiding, on the order of notice issued in accordance with Supreme Judicial Court Rule 4:Ø1, Section 16 (1), including a determination of the State Bar Court that Respondent be involuntarily transferred to an inactive status on the finding that her conduct poses a substantial threat of harm to the the public or her clients, and was argued by Respondent pro se and by Bar Counsel, and after hearing it appearing that the imposition of the identical discipline in this Commonwealth is warranted.

THEREFORE, it is ORDERED and adjudged that the Respondent be suspend-

judged that the Respondent be suspend-
from the practice of law in the
Commonwealth of Massachusetts pend-
ing final disposition of disciplin-
ary proceedings pending in the Supreme
Court of the State of California.

By the Court (Nolan,J)

GENE E. SLYVA

Assistant Clerk
Supreme Judicial Court
for Suffolk County

December 13, 1989

APPENDIX C

COMMONWEALTH OF MASSACHUSETTS

Suffolk, SS. Supreme Judicial Court
for Suffolk County
No. 89-42BD

On the foregoing Order of the State Bar of California filed September 8, 1989 it is ordered that the ... give notice to the said respondent, Betsey Warren Lebbs, under S.J.C. Rule 4: 01, s. 16(1), directing her to inform the Court within thirty (30) days of the service of this Order of Notice why the imposition of the identical discipline imposed in the State Bar of California, if imposed in the Commonwealth of Massachusetts would be unwarranted, by serving her with an attested copy of said Order of the State Bar of California filed and of this order forth-

with.

By the Court (Nolan, J.)

Assistant Clerk

GENE E. SLYVA

A true copy of said Order of the State Bar of California and order.

Attest,

Assistant Clerk,

GENE E. SLYVA

Appendix C-2